

Am

Supreme Court, U.S.
FILED

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of The United States

OCTOBER TERM, 1979

NO. 79-711

STATE OF ALABAMA,

PETITIONER

VERSUS

JAMES G. DAVIS,

RESPONDENT

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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COURT OF APPEALS FOR THE FIFTH CIRCUIT

In light of recent developments the
petitioner, the State of Alabama, pursuant to
Supreme Court Rule 24, respectfully prays that

the petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit be granted, that the judgment of the United States Court of Appeals for the Fifth Circuit found at 596 F.2d 1214 (5th Cir. 1979) be vacated and that the cause be sent back for dismissal.

SUPPLEMENT TO OPINIONS OF THE COURTS BELOW
AND STATEMENT OF THE CASE

On January 7, 1980 the original petition for writ of habeas corpus was dismissed in the United States District Court for the Northern District of Alabama, Northeastern Division.

(Appendix G)

REASONS FOR GRANTING WRIT, VACATING
JUDGMENT BELOW AND MANDATING DISMISSAL

In support of its supplemental prayer, petitioner, the State of Alabama, shows unto this Honorable Court the following:

1. On November 2, 1979 a timely petition for writ of certiorari was filed in this Honorable

Court.

2. On January 2, 1980 this Honorable Court directed B. Don Hale, Esq. to file a response.

3. On January 7, 1980 the original petition for writ of habeas corpus was dismissed in the United States District Court for the Northern District of Alabama, Northeastern Division upon motion of the petitioner. (Appendix G) Both the State of Alabama and B. Don Hale, Esq. were without knowledge of the filing of such motion. The State of Alabama has now been informed that such motion was filed by J. Foster Clark, Esq., court-appointed counsel.

4. The judgment of the United States Court of Appeals for the Fifth Circuit in Davis v. Alabama, 596 F.2d 1214 (5th Cir. 1979) should not be allowed to stand against the State of Alabama. United States v. Munsingwear, 340 U.S. 36 (1950).

CONCLUSION

For the foregoing reasons, the State of Alabama respectfully prays that this Honorable Court grant the petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit, vacate the judgment of the Fifth Circuit in Davis v. Alabama, 596 F.2d 1214 (5th Cir. 1979) and mandate dismissal of this cause.

Respectfully submitted,

CHARLES A. GRADDICK
ATTORNEY GENERAL
BY-

CAROL JEAN SMITH
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250 Administrative Building
64 N. Union Street
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CERTIFICATE OF SERVICE

I, Carol Jean Smith, one of the attorneys for Petitioner and a member of the Bar of the Supreme Court of the United States, do hereby certify that on this ____ day of February, 1980 I did serve the requisite number of copies of the foregoing Supplement to the Petition for Writ of Certiorari on B. Don Hale, Esq. whose address is 316 2nd Ave., SW, Cullman, Alabama 35055, previous attorney for the Respondent, and on J. Foster Clark, Esq., whose address is 600 N. 18th St., P. O. Box 306, Birmingham, Alabama 35203, present attorney for Respondent, and on the Clerk of the United States District Court for the Northern District of Alabama, Federal Courthouse, Birmingham, Alabama 35203, by mailing said copies to them at the aforesaid addresses with first class postage prepaid.

CAROL JEAN SMITH
ASSISTANT ATTORNEY GENERAL

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

JAMES G. DAVIS,

Petitioner,

vs.

STATE OF ALABAMA,

Respondent.

NO. CA 75-A-0803-NE

O R D E R

On motion of petitioner and for good cause shown, it is hereby ORDERED that the writ for petition of habeas corpus be and the same hereby is DISMISSED.

DONE this 7th day of January, 1980.

/s/ C. W. Allgood
CLARENCE W. ALLGOOD, SENIOR JUDGE
UNITED STATES DISTRICT COURT

APPENDIX G